IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 3682/2004

PETITIONERS

1. Kalicharan Sonakar, aged about 36 years. S/o. Lt. Marhuram Sonkar
2. Smt. Yashoda Bai Sonkar, aged about 23 years
3. Smt. Saraswati Bai Sonkar, aged about 40 years, D/o. Lt. Marhu Ram Sonkar
4. Smt. Saroj Bai Sonkar, aged about 25 years, D/o. Lt. Durga Charan Sonkar,

Present R/o. Gunderdehi, District Durg

All of R/o. Ramkund Raipur, District Raipur (C.G.)

P.R. No. 3671/04 Presented by Shri Rakesh Sahu dated 21/12/04

VERSUS

RESPONDENTS

1. Surendra Kumar Jain, aged about 40 years, S/o. Satyanarayan Jain.
2. S.K. Jain & Sons (H.U.F.) Prop.- S.K. Jain, aged about 40 years, S/o. Satyanarayan Jain,
3. Smt. Kusum Jain, aged about 37 years, W/o. Surendra Kumar Jain,

All of R/o. B-4 Anupam Nagar, Raipur, District Raipur (C.G.)

4. Shanti Finance & Property Development Pvt. Ltd. Through Director Smt. Kusum Jain Registered office A/13, Mahavir Gaushala Complex, K.K. Road, Maudhapara, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(34)

**HIGH COURT OF JUDICATURE, CHHATTISGARH (BILASPUR)**

**Writ Petition No. 3682 of 2004**

Kalicharan Sonakar & others

Versus

Surendra Kumar Jain & others

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Shri Abhay Tiwari, Advocate for the petitioner.

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**ORDER**

(Passed on 26th November 2004)

**As per L.C. Bhadoo J.**

1. The petitioner has preferred this writ petition under Article 227 of the Constitution of India, questioning the correctness and legality of the order dated 4.9.2004 passed by the learned 11th Additional District Judge (F.T.C.) Raipur in Misc. Civil Appeal No. 8/2004, whereby learned Additional District Judge affirmed the order dated 12.5.2000 passed by learned 5th Civil Judge, Class-II, Raipur in Civil Suit No. 42-A/2000, rejecting the application filed by the petitioners (herein) under Order 39 Rule 1 and 2 of the C.P.C. for grant of temporary injunction.

2. Brief facts leading to filing of this petition are that the petitioner (herein) filed a suit before the 5th Civil Judge Class –II Raipur for declaration and injunction against the respondents (herein) to the effect that the defendant No.5 Smt. Buddha Bai, Village-Cirhooldeeh had sold the land admeasuring 11.567 square meter of Khasra No. 792/1 & 0.806 to the Respondents No. 1 to 4 (herein) by registered sale deed dated 12.10.1999, whereas the said land was co-parcenery /joint- property of the

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petitioners, therefore without consent of the petitioners (herein) she was not entitled to sold the same.

3. Learned trial Court rejected the application of the petitioner for grant of temporary injunction on the ground that in the record the land in question was in the name of the defendant No.5 Buddha Bai and the petitioners (herein) were not able to produce any documentary or other evidence to show their right of ownership in the property. On appeal, learned lower appellate Court also affirmed the order on the same ground.

4. I have heard learned counsel for the petitioner on admission of the petition.

5. Under Article 227 of the Constitution of India this Court can interfere with the order of the sub-ordinate Court under the supervisory jurisdiction only when impugned order is perverse, contrary to settled principles of law or the subordinate Court has no jurisdiction and failed to exercise the jurisdiction which was vested in that Court or failure of justice or grave injustice has resulted, as has been held by the Hon'ble Apex Court in the matter of **Surya Dev Rai V. Ram Chander Rai & Ors.** reported in **JT 2003 (6) SC 465** that:

> "Interlocutory orders passed by courts subordinate to the High Court against which the remedy of revision has been excluded are open to challenge and subject to certiorari and the supervisory jurisdiction of the High Court. In exercise of certiorari or supervisory jurisdiction the High Court will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inference or correct errors of mere formal or technical character. Whe

subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step in to exercise its supervisory jurisdiction."

6. If we look into the fact of the present case the land in question was sold by Buddha Bai to the Respondents No. 1 to 4 which was entered in her name in the revenue records and the petitioners herein were not able to show that the land in question was joint Hindu property of the petitioners. During the course of arguments learned counsel for the petitioners was not able to point out as to how the orders passed by the trial Court and lower appellate Court are perverse or contrary to the settled principles of law. Therefore, this Court cannot sit as an appellate Court. It is not a case where the impugned order is passed in contravention of law or in any case the order is perverse.

7. Therefore, on the above facts, I do not find any reason to interfere with the concurrent findings of both the courts below and there is no illegality in the orders passed by the trial Court and the lower appellate Court. The petition of the petitioner is dismissed at this admission stage itself.

Sd/-
L.C.BHADOO
Judge

Thakur